

Colorado Department of Education  
Decision of the Federal Complaints Officer  
Under the Individuals with Disabilities Education Act (IDEA)

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**Federal Complaint 2002:502**

Pueblo SD 70

**Decision**

**INTRODUCTION**

This Complaint was dated February 6, 2002, and received by the Federal Complaints Officer on February 14, 2002. On February 26 and March 1 of 2002, the Federal Complaints Officer had telephone conversations with the school district's attorney, in which the Federal Complaints Officer explained to the school district's attorney that the school district's response needed to address the extent to which, if any, the school district maintained that the complainant's parental status affected a determination of the allegations of the violations the complainant had alleged. The Federal Complaints Officer also explained to the school district's attorney that, regardless of whether or not the student subject to this Complaint was still receiving services under the Individuals with Disabilities Education Act (IDEA), the Complaint, unless withdrawn by the complainant, would be decided by the Federal Complaints Officer, and the school district needed to specifically respond to all of the compliance issues raised by the complainant in his letter to the school district's Special Education Director, dated May 14, 2001. The school district's attorney assured the Federal Complaints Officer that he understood the Federal Complaints Officer's explanations.

The school district's response to the Complaint was dated March 8, 2002, and received by the Federal Complaints Officer, by fax, on March 11, 2002, and by regular mail on March 12, 2002. The complainant's response to the school district's response to his Complaint was dated April 2, 2002, and received by the Federal Complaints Officer, by fax, on April 5, 2002. The Federal Complaints Officer then closed the record.

**COMPLAINANT'S ALLEGATIONS**

- 1) The complainant alleges that he did not receive appropriate notice of an October 20, 1999 Individualized Education Program (IEP) meeting for his son. 34 CFR 300.345 (a)(1)(2) of the IDEA federal regulations implementing the IDEA federal statute, and Colorado Rule 4.02(5) of the Colorado Rules implementing the Colorado Exceptional Children's Educational Act (ECEA), provide for this notice.

- 2) The complainant alleges that special education services for his son for the 1999-2000 school year were not timely implemented by the respondent school district for his son, who was a special services transfer student entering the respondent school district at that time. 34 CFR 300.342(a) of the IDEA regulations provide that IEPs are to be in effect at the beginning of each school year. Colorado Rule 4.03 of the ECEA regulations provides procedures for students with special needs who are transferring into a Colorado school district.
- 3) The complainant alleges that he was wrongfully denied an opportunity to participate in his son's October 3, 2000 IEP meeting. 34 CFR 300.345(a)(1)(2) of the IDEA regulations, and Colorado Rule 4.02(5) of the ECEA regulations, make provisions for the notice providing the opportunity for parental participation in IEP meetings.
- 4) The complainant alleges that he did not receive appropriate notice prior to a November 16, 2000 IEP meeting for his son. 34 CFR 300.345(a)(1)(2) of the IDEA regulations, and Colorado Rule 4.02(5) of the ECEA regulations, provide for this notice.
- 5) The complainant alleges that there was no regular education teacher at a November 16, 2000 IEP meeting for his son. 34 CFR 300.344(a)(2) of the IDEA regulations, and Colorado Rule 4.02(3)(a)(iii) of the ECEA regulations provide for the presence of regular education teachers at IEP meetings.
- 6) The complainant alleges that he did not receive notice of who would attend a November 16, 2000 IEP meeting for his son. 34 CFR 300.345(a)(b)(i) of the IDEA regulations, and Colorado Rule 4.02(5)(a)(ii) of the ECEA regulations provide for such notice.
- 7) The complainant alleges that he did not receive progress reports regarding his son, as often as such reports were made available to parents of students who were not receiving services under IDEA. 34 CFR 300.347(a)(7)(ii) of the IDEA regulations, and Colorado Rule 4.02(4)(f)(ii) of the ECEA regulations provide for such reports.
- 8) The complainant alleges that his son's progress towards meeting his IEP goals was not appropriately measured. 34 CFR 300.347(a)(7)(i) of the IDEA regulations, and Colorado Rule 4.02(4)(e)(iii) of the ECEA regulations provide for such measurement.
- 9) The complainant alleges that the meeting of November 16, 2000, which he requested be an IEP meeting, was not treated as an IEP meeting by the school district. 34 CFR 300.343(a) of the IDEA regulations, and Colorado Rule 4.02(a)(iii) of the ECEA regulations provide for the responsibility of school district's in conducting IEP meetings.
- 10) The complainant alleges that his consent was not obtained by the school district for March 14 and March 20, 2001 evaluations conducted by the school district for his son. 34 CFR 300.505 of the IDEA regulations, and Colorado Rule 6.02(2) of the ECEA regulations provide for parental consent.
- 11) The complainant alleges that he received inadequate notice for an April 6, 2001 IEP meeting for his son. 34 CFR 300.345(a)(1)(2) of the IDEA regulations, and Colorado Rule 4.02(5) of the ECEA regulations provide for this notice. 34 CFR 300.503 and 34 CFR 300.504 of the IDEA regulations, and Colorado Rule 6.02 of the ECEA regulations, also provide for relevant notice, given that the decision was made that complainant's son was no longer eligible for special education services.
- 12) The complainant alleges that he received inadequate notice of the evaluation procedures used for his son, that were relied upon by the April 6, 2001 IEP team. 34 CFR 300.503(b)(4) of the IDEA regulations, and Colorado Rule 4.01(3)(b) of the ECEA regulations provide for such notice.
- 13) The complainant alleges that there is inaccurate information maintained by the school district in his son's educational records. The Family Education Rights and Privacy Act (FERPA), referenced in the educational records provisions at 34 CFR 300.560-577 of

the IDEA regulations, make provisions for resolving disagreements between parent(s) and school districts over student educational records in the custody of school districts.

## **SCHOOL DISTRICT'S RESPONSE**

The Federal Complaints Officer interprets the school district's response as denying all allegations of violation of law.

## **FINDINGS AND DISCUSSION**

The Federal Complaint procedures under IDEA normally preclude consideration of allegations of violations occurring more than one year prior to the date the Complaint is received. See 34 CFR 300.662(c). Allegations of violations one (1) through six (6), and allegation nine (9) in this Complaint, allege violations occurring more than one (1) year prior to a Complaint filing date of February 14, 2002. However, the school district presented no argument that these allegations should not be considered because of untimely filing. Moreover, arguably, the nature of the alleged violations are similar enough to come within the scope of the "continuing" exception to this regulatory time limitation, and alleged violation number (2) implicates the possibility of compensatory education, consideration of which would provide another exception to the regulatory time limitation, although the complainant did not make a request for such consideration. The complainant did formally bring his concerns to the attention of the respondent school district through his letter to the school district's Special Education Director, dated May 14, 2001. The complainant also consulted, in the fall of 2001, both the Office for Civil Rights (OCR) and the Federal Complaints Officer regarding seeking relief for his concerns. For all the reasons stated, the Federal Complaints Officer finds that it would be inequitable to deny the complainant a Decision regarding alleged violations one (1) through six (6), and alleged violation number nine (9), due to the invoking of a time limitation that might otherwise preclude such a Decision. The Comment to 34 CFR 300.662 does not preclude this finding, nor does the Colorado Federal Complaint Procedure.

The Federal Complaints Officer finds nothing in the school district's response to this Complaint sufficient to challenge the complainant's parental standing substantive to the violations he has alleged. Therefore, for purposes of deciding this Complaint, unless otherwise indicated by the Federal Complaints Officer, the Federal Complaints Officer is proceeding with the presumption that the complainant has the requisite substantive parental standing. This presumption applies only for the purpose of deciding this Complaint.

- 1) The Federal Complaints Officer finds the school district violated IDEA 34 CFR 300.345(a)(1)(2) and ECEA Colorado Rule 4.02(5), with regard to the complainant, with regard to the October 20, 1999 IEP meeting.
- 2) The Federal Complaints Officer finds the school district violated IDEA 34 CFR 300.342(a), and ECEA Colorado Rule 4.03 by failing to timely implement special education services for the complainant's son at the beginning of the 1999-2000 school year.

- 3) The Federal Complaints Officer finds the school district violated IDEA 34 CFR 300.345(a)(1)(2), and ECEA Colorado Rule 4.02(5), with regard to the complainant, for the complainant's son's October 3, 2000 IEP meeting.
- 4) The Federal Complaints Officer finds the school district violated IDEA 34 CFR 300.345(a)(1)(2) and ECEA Colorado Rule 4.02(5), with regard to the complainant, with regard to the November 16, 2000 IEP meeting for complainant's son.
- 5) The Federal Complaints Officer finds the school district violated IDEA 34 CFR 300.344(a)(2), and ECEA Colorado Rule 4.02(3)(a)(iii) by failing to have a regular education teacher at complainant's son's November 16, 2000 IEP meeting.
- 6) The Federal Complaints Officer finds the school district violated IDEA 34 CFR 300.345(a)(b)(i), and ECEA Colorado Rule 4.02(5)(a)(ii), with regard to the complainant, by failing to provide him with notice of who would attend his son's November 16, 2000 IEP meeting.
- 7) The Federal Complaints Officer finds the school district violated IDEA 34 CFR 300.347(a)(7)(ii), and ECEA Colorado Rule 4.02(4)(f)(ii), with regard to the complainant, by failing to provide him with progress reports for his son at least as often as such reports were provided to students not receiving services under IDEA.
- 8) The Federal Complaints Officer finds the school district violated IDEA 34 CFR 300.347(a)(7)(i), and ECEA Colorado Rule 4.02(4)(e)(iii) by failing to indicate an adequate standard of measurement for complainant's son's progress towards meeting his annual goals and objectives.
- 9) The Federal Complaints Officer finds that the meeting of November 16, 2000 was intended by the complainant to be an IEP meeting and the school district violated IDEA 34 CFR 300.343(a), and ECEA Colorado Rule 4.02(a)(iii), by not conducting this meeting as an IEP meeting.
- 10) The Federal Complaints Officer finds no violation by the school for failing to obtain the complainant's consent for evaluation(s). The Federal Complaints Officer does not interpret IDEA, the ECEA, or the joint custody order of the Colorado court, to require the school district to obtain such consent from both parents. To require that this be the case would allow one parent to inappropriately deny the parental rights of the other parent, by inappropriately making it potentially more difficult for the school district to proceed according to the school district's own judgment of how best to determine the student's educational needs. That said, it is also the view of the Federal Complaints Officer that had the complainant appropriately referred his son to the school district for evaluation/eligibility determination, to which the parent having physical custody had objected, the school district would have been required to proceed with such evaluation/eligibility determination, absent an appropriate court order giving the physical custodian the right to prohibit such evaluation/eligibility determination. The extent to which, if any, a school district can rely on one parent's consent for placement/services provision (which can result in a change in the educational services the student receives), as opposed to one parent's consent for an evaluation/eligibility determination (which, by itself, does not necessarily result in a change in the educational services a student receives), over the objection of the other parent, absent an appropriately clarifying court order, is an issue the Federal Complaints Officer leaves un-addressed.
- 11) The Federal Complaints Officer finds the school district violated IDEA 34 CFR 300.345(a)(1)(2), 34 CFR 300.503 and 504, and ECEA Colorado Rule 4.02(5), with regard to the complainant, with regard to the IEP meeting held for complainant's son on April 6, 2001.

- 12) The Federal Complaints Officer finds the school district violated IDEA 34 CFR 300.503(b)(4), and ECEA Colorado Rule 4.01(3)(b), with regard to the complainant, with regard to the April 6, 2001 IEP meeting.
- 13) The Federal Complaints Officer finds no violation, based upon the evidence in the record before him, by the school district of IDEA 34 CFR 300.560-577, with regard to the complainant. Allegations of violations of FERPA are not within the jurisdiction of the Federal Complaint process. However, the IDEA regulations at 34 CFR 300.560-577, and the FERPA regulations – 34 CFR Part 99 – do provide a parent a right to a hearing to contest any part of their student son's or daughter's educational records, and also provide the parent(s) with a right to submit information into such educational records which then must become a part of those records. The parent(s) also have a right to file a FERPA complaint with the Family Policy Compliance Office (FPCO), United States Department of Education, 400 Maryland Ave., S.W., Washington, DC 20202-4605.

### **REMEDY**

Within thirty (30) calendar days of the date of the school district's certified receipt of this Decision, the Special Education Director shall submit to the Federal Complaints Officer a Statement of Assurance sufficient to demonstrate that the school district has policies and procedures in place to deter the occurrence of further violations such as those found to have occurred by the Federal Complaints Officer. If the Special Education Director needs any clarification of what is expected to meet this remedy, he should contact the Federal Complaints Officer.

### **CONCLUSION**

This Decision becomes final as dated by the signature of the Federal Complaints Officer. A copy of the appeal procedure is attached.

Dated today, April \_\_\_\_\_, 2002.

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Charles M. Masner, Esq.  
Federal Complaints Officer